IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT APPEAL No.2004 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 26-11-2004 in WPMP.No.23234 of 2004 in W.P.No.17727 of 2004 on the file of the High Court.)

Between:

1. G.Narasimha Raju Yadav,

S/o.late Venkata Subbaiah,

Managing Partner, Brindavan Talkies,

Machilipatnam.

2.Brindavan Talkies rep.by its Managing

Partner, G.Narasimha Raju Yadav.

..... APPELLANTS

AND

1.V.Lakshmi Nageswar Rao,

S/o.Venkataratnam, R/o.Machilipatnam.

2.The Joint Collector, Krishna District,

at Machilipatnam.

.....RESPONDENTS

Counsel for the Appellants: Mr.M.S.PRASAD
Counsel for Respondent No.1: Mr.A.RAMNARAYANA.
Counsel for Respondent No.2: G.P. FOR HOME

The Court made the following:

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ORAL JUDGMENT: (per the Hon'ble the Chief Justice)

We have heard the learned counsel for the parties.

The order under challenge is passed by a learned single Judge on 26th November 2004 allowing WPMP.No.23234 of 2004 in W.P.No.17727 of 2004 and making the interim order dated 5th November 2004 absolute.

By the order dated 5th November 2004, the learned single Judge directed that having regard to the fact that the licence had been allegedly surrendered by the licence-holder to first respondent–writ petitioner in the writ petition, there shall be interim direction as prayed for. By the order dated 26th November 2004, which is impugned herein, the learned single Judge made absolute the order dated 5th November 2004. In nutshell, first respondent was directed to stop screening of films in Brindavan Garden Theatre, Machilipatnam.

The appellants are respondents 2 and 3 in the writ petition. Respondent No.1 is the writ petitioner. The dispute pertains to Brindavan Talkies which was being run as a cinema theatre by the partnership firm which was registered with the Registrar of Firms on 11th August 1988. It is alleged that it was re-constituted on 7th November 2003. Appellant No.1 became the Managing Partner. One T.Sai Kiran, who was also a partner in the firm (re-constituted on 7-11-2003), was alleged to have dissolved the firm as the firm alleging it to be a partnership at will, by serving a notice under Section 43(1) of the Indian Partnership Act on 22nd July 2004, duly intimating the Registrar of Firms. It is also stated that prior to re-constitution, T. Satyanarayana Murthy was the Managing Partner, and at the time of re-constitution of the firm, appellant No.1, who was nominated as Managing Partner of the firm, made an

application to change B-Form licence in his name. The writ petitioner thus alleged that the remaining partners of the erstwhile firm cannot run the business. In nutshell, the petitioner's case was that after T.Sai Kiran dissolved the firm, he transferred his rights in favour of the writ petitioner, and on acquisition of interest of T.Sai Kiran, he filed objections before the Joint Collector on 9th September 2004, not to transfer the licence, and on that premise he sought a direction to declare the action of the official respondent in permitting screening of films in the theatre as illegal and void.

The learned single Judge by order dated 5th November 2004, granted interim direction not to screen the films by first respondent in the theatre on the premise that licence had been surrendered by the licence-holder to the official respondent. After the interim order was passed, the appellants filed WPMP.No.27355 of 2004 praying to recall the order dated 5th November 2004 in WPMP.No.23234 of 2004, on the ground that they had no opportunity to oppose the interim prayer since their counsel's name was not printed in the cause list. However, it appears that no orders have been passed in WPMP.No.27355 of 2004.

Appellants-respondents 2 and 3 filed a counter affidavit on 15th November 2004 questioning the very maintainability of the writ petition for the releifs prayed on number of grounds. One of the grounds urged was that T.Satyanarayana Murthy, father of T.Sai Kiran, who was the Managing Partner had sold his share to G.Venkataramana, and Sri G.Raj Kisore Yadav became a partner after the death of his father G.Rama Raju, and that it was specifically agreed in the partnership agreement dated 7th November 2003 that partnership will continue without dissolution of the firm and in the event of any other partner withdrawing from the partnership firm, the remaining partners will continue the business. The fact that T.Sai Kiran dissolved the firm by giving notice dated 22nd July 2004, was disputed stating that interim reply was given to the notice and was also got published in the newspaper. They also alleged that licence of the theatre always stood in the name of the Managing Partner for the last 34 years and, therefore, as per A.P. Cinema (Regulation) Rules, after appellant No.1 became Managing Partner of the theatre, an application was made. The same was approved by the licensing authority in Proceedings dated 6th August 2004. A copy of the proceedings dated 6th August 2004 was appended to the reply. Needless to add that there is no challenge in the writ petition by the writ petitioner to the proceedings dated 6th August 2004, which

order admittedly was known to the petitioner or in any case a copy of it was filed in the Court. In the absence of any challenge to the said order, it is not open in the writ appeal to question the validity and legality of the said order particularly in view of the availability of alternative remedy. The appellants have also questioned the maintainability of the writ petition for the very reliefs claimed therein.

In view of the disputed questions of fact as to whether the partnership is or is not liable to be dissolved or it stood dissolved and in view of the fact that on 6th August 2004, an order already stood passed by the official respondent transferring the licence in favour of the appellants herein, pursuant to an order of this Court in WPMP.No.5980 of 2004 in W.P.No.4577 of 2004, dated 6th March 2004, learned single Judge ought to have relegated the writ petitioner to the remedy of appeal to challenge the order dated 6th August 2004. In view of the disputed questions of fact, the appropriate course would have been to relegate the petitioner to the appropriate forum challenging the said order in accordance with law rather than entertaining the writ petition and passing an order of restraint against a person who has got a valid licence.

Learned single Judge failed to consider the questions of *prima facie* nature and the balance of convenience and irreparable loss while passing order of restraint thereby stopping screening of the films and running of the theatre, which was an aspect, which ought to have been considered. Learned single Judge also failed to see the loss or harm if any caused to the writ petitioner if the other party is permitted to continue to run the theatre, which could always be compensated in money. In the absence of such considerations, the order is rendered bad in law.

Consequently, we allow the appeal, set aside the impugned order, dismiss WPMP.No.23234 of 2004 and we allow WPMP.No.27355 of 2004 in W.P.No.17727 of 2004, and vacate the order passed by the learned single Judge.

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(DEVINDER GUPTA, C.J.)

30th November 2004.

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(G.ROHINI, J.)

ARS

To

1. The Joint Collector, Krishna District,

at Machilipatnam.

2. Two C.Cs to Govt. Pleader for Home, High Court Bldgs., Hyderabad (OUT).

3. Two C.D. copies.